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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 523.

THE UNITED STATES, APPELLANTS,

vs.

E. E. NORTON, ASSIGNEE OF D. CEIF, A BANKRUPT.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 14, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 523.

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E. E. NORTON, ASSIGNEE OF D. CEIF, A BANKRUPT.

APPEAL FROM THE COURT OF CLAIMS.

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1 *Petition.—Filed June* 12, 1871.—J. R.

United States Court of Claims, December term, 1871.

E. E. NORTON, ASSIGNEE IN BANKRUPTCY OF D. Cerf, bankrupt,
vs.
THE UNITED STATES. } No. 6341.

To the honorable the Court of Claims:

The petition of Emory E. Norton, a citizen of Stroudsbourg, State of Pennsylvania, temporarily residing in the city of New Orleans, herein appearing as the assignee in bankruptcy of the estate of D. Cerf, bankrupt, with respect showeth:

That the said D. Cerf, residing in the city of New Orleans, was duly adjudged a bankrupt on the 3d of March, 1868, in the district court of the United States for the district of Louisiana; and that on the 1st of April, 1868, your petitioner was duly appointed and qualified as the assignee in bankruptcy of said bankrupt, under the deed of assignment therein to him made by said court on said date of appointment.

Your petitioner now avers that the said D. Cerf while in the city of New Orleans, in the month of June, 1865, engaged in a transaction in cotton under the authority of an act of Congress of July 2d, 1864, by which it was provided that it "should be lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any products of States declared in insurrection, at such places as shall be designated therein by him, at such prices as shall be agreed upon with the seller, not exceeding the market-value thereof at the place of delivery, nor exceeding three-fourths of the market-value thereof in the city of New York, at the latest quotations known to the agent purchasing."

Your petitioner further shows that under the authority of said act of Congress, and in accordance therewith, the Secretary of the Treasury issued on the 24th day of September, 1864, with the approval of the President, of same date, general regulations, and, on the 9th
2 day of May, 1865, with the approval of the President of same date, amended regulations for the purchase of the products of the insurrectionary States on government account.

That accordingly the said D. Cerf sold to the United States, and repurchased through O. N. Cutler, the purchasing-agent of the United States, at the city of New Orleans, on the 13th day of June, 1865, fifty-four bales of cotton, weighing 21,940 pounds, of the class of good ordinary cotton, and abandoned to the said O. N. Cutler, purchasing-agent for the United States, one-fourth of said lot of fifty-four bales of cotton, to wit, eighteen bales thereof.

Your petitioner avers that the surrender and payment by the said D. Cerf of said eighteen bales of cotton, was illegally exacted, and was made by the said D. Cerf in error, because, before the said transaction was perfected, to wit, on the 13th day of June, 1865, the President of the United States had annulled and removed all restrictions on trade east of the Mississippi River, as by law he had a right to do, and that thereby the 8th section of the act of Congress of July 2d, 1864, under which the said cotton was claimed, was repealed and became inoperative as regards the city of New Orleans, which lies east of the Mississippi River.

Your petitioner further avers that he is advised and believes that the said O. N. Cutler, purchasing-agent for the United States, regularly rendered his accounts to the Treasury Department, and under the direction of said government shipped the aforesaid cotton to the government agent at New York, through whom it was regularly sold, and that the proceeds thereof were paid over into the Treasury of the United States.

And whereas from the premises it appears that the government of the United States has thus irregularly, incorrectly, and illegally obtained the proceeds of said eighteen bales of cotton, an implied obligation arises on the part of the United States to refund to your petitioner said proceeds of said bales.

Wherefore your petitioner submits and prays that a decree may be rendered, declaring that he is entitled to recover from the Government of the United States the proceeds of said eighteen bales of cotton, the amount of which can only be ascertained by the accounts of the Treasury Department, not accessible to your petitioner except through the assistance of this honorable court.

Your petitioner further avers that he has always been a loyal citizen of the United States, and borne true allegiance to the government thereof, and has not, nor has the said Cerf, a citizen of France who never violated his neutrality, in any way voluntarily aided, abetted, or given encouragement to the rebellion against said Government of the United States.

LOUIS JANIN & SONS,
HUGHES, DENVER & PECK,
Washington, D. C., Solicitors for Claimant.

Address of claimant: New Orleans, La.

3 E. E. Norton, assignee in bankruptcy of the estate of D. Cerf, bankrupt, being duly sworn, deposes that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government; that no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof, or any interest therein, has been made, except as in the said petition stated; that the affiant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

E. E. NORTON,
Assignee, &c.

Sworn to and subscribed before me this fifth day of June, 1871.
[SEAL.] D. URBAN,
United States Commissioner.

David Cerf, being duly sworn, deposes that he is a foreign subject, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the Government of the United States.

D. CERF.

Sworn to and subscribed before me this 21st day of April, 1869.
N. LOEW,
U. S. Com'r, La.

4 In the Court of Claims of the United States.—December term, A. D. 1870.

EMORY E. NORTON, ASSIGNEE IN BANKRUPTCY of D. Ceif, *vs.* THE UNITED STATES. } No. 6341.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of the proceeds of eighteen bales of cotton, says that they are not indebted to said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, denies the said allegation.

THOMAS H. TALBOT,
Assistant Attorney-General.

Filed August 11, 1871.

5 In the Court of Claims.

E. E. NORTON, ASSIGNEE IN BANKRUPTCY OF D. Cerf, bankrupt, *vs.* THE UNITED STATES. } No. 6341.

Set-off and counter-claim.

The said defendants, by Thomas Simons, Assistant Attorney-General, come and say that the said plaintiff, as assignee aforesaid, before and since the commencement of this suit, was and still is indebted to the said defendants in a large sum of money, to wit, $438.80, the same being for internal-revenue tax upon the 54 bales of cotton brought by his assignors into New Orleans.

6 Wherefore the Assistant Attorney-General prays that judgment be entered against claimants for said sum of $438.80.

THOMAS SIMONS,
Assistant Attorney-General.

Filed May 17, 1876.

7 In the Court of Claims.

E. E. NORTON, ASSIGNEE IN BANKRUPTCY OF D. Ceif, *vs.* THE UNITED STATES. } 6341.

At a Court of Claims held at the Capitol, in the city of Washington, the first day of June, A. D. 1876, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the

claimant, and do order, adjudge, and decree that the said E. E. Norton, assignee in bankruptcy of D. Ceif, do have and recover of and from the United States the sum of fourteen hundred and sixty-one dollars and fifty-two cents ($1,461\frac{52}{100}$).

By the court.

A true copy of record.

8 In the Court of Claims of the United States, Dec. term, 1875.

E. E. NORTON, ASSIGNEE IN BANKRUPTCY OF D. Ceif,
vs.
THE UNITED STATES. } No. 6341.

From the judgment rendered in the above-entitled cause on the 1st day of June, 1876, in favor of claimant, the defendants, by their Attorney-General, on the 26th day of August, 1876, make application for, and give notice of an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Ass't Attorney-General.

Filed August 26, 1876.

AT CHAMBERS.

Allowed.

C. D. DRAKE, *C. J.*

9 Court of Claims.

E. E. NORTON, ASSIGNEE IN BANKRUPTCY OF D. Cerf, bankrupt,
vs.
THE UNITED STATES. } No. 6341.

Findings of facts.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

On the 12th of June, 1865, there arrived at New Orleans on the steamer Grey Eagle, from Vicksburg, fifty-four bales of cotton belonging to D. Cerf, the plaintiff's assignor in bankruptcy. At that time no shipments of cotton to New Orleans were allowed, except such as were
10 consigned to the purchasing-agent. On the 13th of June, 1865, Cerf executed a bill of sale of all the cotton to the purchasing-agent (without any expressed consideration), and on the same day the Treasury agent executed a bill of sale to Cerf (also without an expressed consideration) of forty-one bales thereof. Cerf thereupon received the forty-one bales, and the Treasury agent retained the thirteen bales, such interchanged bills of sale being in fact one transaction, intended to be in compliance with the act July 2d, 1864, § 8 (13 Stats. L., 375), and the Treasury regulations thereunder of May 9, 1865. The thirteen bales were
11 subsequently shipped to S. Draper, United States cotton-agent at New York, and sold by him, producing a net average of one hundred and thirty-seven dollars and seventy-four cents per bale, or seventeen hundred and ninety dollars and sixty-two cents net, in all; and said proceeds have been duly covered into the Treasury. The forty-one bales returned to Cerf were returned free from all fees and internal-revenue taxes.

The internal-revenue tax of 2 cents per pound on said fifty-four bales of cotton amounted to $438.80.

At the date of the transaction neither said Cerf nor the purchasing-agent had knowledge of the Presidential proclamation of June 13th, 1865.

12 Court of Claims.

E. E. NORTON, ASSIGNEE IN BANKRUPTCY of D. Cerf, bankrupt,
vs.
THE UNITED STATES. } No. 6341.

Request of claimant for further findings of facts.

The internal-revenue tax of 2 cents per pound on the forty-one bales returned to Cerf out of the lot of 54 bales amounted to the sum of three hundred and twenty-nine dollars and ten cents.

E. & A. C. JANIN,
Attorneys of Claimant.

Upon the foregoing request, the court makes the following order, to wit:

Allowed.

13 Upon the foregoing findings of fact, the Court of Claims decides as

Conclusions of law:

I. The claimant is entitled to recover the avails of thirteen bales of cotton exacted from his *his* assignor by the Treasury agent in New Orleans on the 13th June, 1865, amounting to $1,790.62.

II. The defendants are entitled to recover the internal-revenue tax of two cents per pound on the forty-one bales of cotton returned to the claimant's assignor by the Treasury agent in New Orleans on the 13th June, 1865, amounting to the sum of $329.10.

14 III. The defendants are not entitled to recover the internal-revenue tax on the thirteen bales of cotton exacted and withheld from the claimant's assignor by the Treasury agent at New Orleans on the 13th June, 1865.

IV. Judgment should be entered for the claimants for the balance remaining after deducting said set-off in favor of the defendants, to wit, $146.52.

By the court.

Filed June 1st, 1876.

15 In the Court of Claims.

E. E. NORTON, ASSIGNEE IN BANKRUPTCY of D. Ceif,
vs.
THE UNITED STATES. } No. 6341.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General for the defendants for the allowance of an appeal, as filed in the clerk's office August 26, 1876, and of

the order of the Chief Justice of said court allowing the same; of the findings of fact by the court and the conclusion of law thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this ninth day of October, A. D. 1876.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 523. The United States, appellants, vs. E. E. Norton, assignee of D. Ceif, a bankrupt. Court of Claims. Filed 14th October, 1876.